IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.315 OF 1998

State of Maharashtra ...Appellant.

V/s

1. Salim Shariff Quereshi
Age 36 years.
2. Javed Salim Quereshi
Age 20 years,
Both residents of Khatik Galli, Mohol, District - Solapur. ...Respondents.

Mr. B.H. Mehta, APP for the State.

CORAM : V.G.PALSHIKAR & R.C.CHAVAN, JJ

DATED : 10th August, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Taking exception to respondents' acquittal by the learned Additional Sessions Judge, Solapur for offence punishable under section 302 read with section 34 of the Penal Code, the State has appealed.

2. Deceased Hanmant Nivrutti Khandare was an employee in a hotel run by accused No. 1 - Salim Sharif Qureshi. Accused No.2 - Javed Salim Qureshi is a son of accused No.1. Vahid Salim Qureshi, the other son of accused No.1 was also alleged to be involved in the incident of death of Hanmant, but being a juvenile at

the relevant time, was sent to Juvenile Court.

3. It was the prosecution case that accused No.1 - Salim Sharif Qureshi was irked by his wife Haseena's free behaviour with the deceased Hanmant. On the night between 7th and 8th August, 1996, the two respondents and juvenile offender Wahid murdered Hanmant by stabbing with knife. This was seen by victim's relations Sukhadev Kshirsagar. On the report by one Suresh Randive, brother-in-law of victim, police registered an offence and commenced investigation. In course of investigation, police performed panchanama of spot and inquest on the dead body and sent the dead body for post-mortem examination, recorded statements of witnesses, arrested accused, seized incriminating articles and, on completion of investigation, sent charge-sheet to the Judicial Magistrate, First Class, Mohol. The learned Magistrate committed the case to the Court of Sessions at Solapur.

4. The learned Additional Sessions Judge, to whom the case was assigned, framed charge of offence punishable under section 302 read with section 34 of the Penal Code against both the respondents who were sent up for trial before him. They pleaded not guilty and hence were put on a trial. Prosecution examined in all 9

witnesses in its attempt to bring home guilt of the accused. Upon consideration of prosecution evidence, in light of defence raised, the learned Additional Sessions Judge acquitted both the respondents of the offence charged. Aggrieved thereby, the State has appealed.

5. With the help of the learned Additional Public Prosecutor Shri Mehta, we have gone through the entire evidence in order to examine whether the conclusions drawn by the learned Additional Sessions Judge were incorrect. In this case, there is no doubt that the victim died of one incise wound on the neck which resulted in cutting of carotid artery, hyoid bone and trachea, upper 1/3 of oesophagus in two pieces as recorded in post-mortem notes at Exhibit-10. These post-mortem notes were duly proved by P.W. 2 - Dr. Zille. The question is only in respect of authorship of this injury.

6. Sukhadev Kshirsagar, who is supposed to have seen the incident, was examined as P.W.1. He turned hostile. It seems that the prosecution apprehended that Sukhadev may not support the prosecution. Hence, on 12/08/1996, a statement of Sukhadev was caused to be recorded before P.W.5 - Special Judicial Magistrate Mohammed Tade. When Sukhadev turned hostile and

denied having made a statement indicating complicity of the respondents, the relevant portions of that statement were duly proved by P.W. 5 - Special Judicial Magistrate, Mohammed. However, as rightly observed by the learned trial judge, this statement recorded under section 164 of the Criminal Procedure Code, at best, is a previous statement of the witness and cannot take the place of substantive evidence tendered at the trial. Therefore, the prosecution is deprived of eye witness account in respect of the incident.

7. P.W. 3 - Dattatraya Katke was a panch at inquest panchanama at Exhibit 8 as well as panchanama of scene of offence at Exhibit-7. He was supposed to have witnessed the seizure of clothes of respondent Nos. 1 and 2. He proved this panchanama at Exhibit-20. However, since he had claimed that clothes were kept by the side of the table in the police station, he was declared hostile. Even in course of cross-examination by the prosecution, he did not say that accused Nos. 1 and 2 produced clothes in his presence. This witness (P.W. 3 - Katke) was also supposed to have been present at the disclosure leading to recovery of knife at the instance of accused No.2. - Javed. However, the witness stated that the knife was taken out by accused No.1 and not accused No.2. In

cross-examination, witness stated that both accused Nos. 1 and 2 had helped the police in keeping the dead body in the Jeep. He stated that he did not know whether knife was found at the scene of offence itself.

8. P.W. 6 - Prabhakar Wakde, the other panch of the memorandum and seizure at the instance of accused No.2, supported the prosecution. He stated that accused No.2, while in custody, said that he would produce a knife from his house. A memorandum was accordingly made vide Exhibit-21. He further states that accused No.2 then led police and panchas to his house and took out a knife which was seized and sealed in their presence vide Exhibit-22. This witness (P.W. 6 Wakde) is serving as a clerk in Tahsil Office and seems to have gone to the Police Station in pursuance of a requisition sent by police to Tahasildar.

9. The value of evidence of this witness (P.W. 6 - Wadke) eroded on account of disclosures made by P.W. 7 -Nivrutti Randive - panch on seizure of clothes of accused Nos. 1 and 2. This witness (P.W. 7 - Randive) stated that the clothes having stains of blood, which he identified as Articles 12 and 13 were seized vide Exhibit-20 in his presence. However, in cross-examination this witness (P.W. 7 - Randive)

made two important disclosures giving a body-blow to the prosecution case: First, he was categorical that a knife was lying by the side of the dead body. If that be so, there is no question of seizure of another knife at the instance of accused No.2. Secondly, he too states that clothes were kept by the side of the table when he went to the Police Station for panchanama. Obviously, therefore, it cannot be said that there was unimpeachable evidence to indicate that the clothes which were seized by the police were, in fact, those worn by the accused at the time of commission of offence.

10. Further, the witness (P.W. 7 Randive) also states that the accused persons helped police in lifting the dead body and keeping the dead body in a Jeep. The nature of injury sustained by the deceased is such that possibility of blood of deceased staining the clothes of these accused persons while lifting the body and keeping it in a Jeep at the instance of police, cannot be ruled out. This would make the finding of blood stains in reports of Forensic Science Laboratory at Exhibit-41 and Blood Group of accused at Exhibit-42 irrelevant. Report at Exhibit-43 in respect of blood of victim is inconclusive and, therefore, no significance could be attached to stains of blood on the clothes of the accused. In view of

this, the learned trial judge cannot be said to have erred in concluding that the prosecution had failed to prove complicity of the accused in death of Hanmant.

11. Hence, acquittal recorded by the learned trial judge does not call for any interference from this Court. In the result, appeal fails and is dismissed. Bail bonds, if any, furnished by the appellants shall stand cancelled.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)